Public Service Commission of Wisconsin

August 29, 1996

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of

Implements of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended

and

CC Docket No. 96-149

Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area

Gentlemen and Mesdames:

Pursuant to the Notice of Proposed Rulemaking, dated July 18, 1996, the Public Service Commission of Wisconsin is providing the enclosed comments. Enclosed are the original plus 11 copies as requested.

Sincerely,

Cheryl L. Parrino
Chairman

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Enclosure

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Before the
Federal Communications Commission
Washington, D.C. 20554

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REPLY COMMENTS OF THE PUBLIC SERVICE COMMISSION OF WISCONSIN

Cheryl L. Parrino
Chairman

Public Service Commission
of Wisconsin
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P.O. Box 7854
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Dated August 28, 1996

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EXECUTIVE SUMMARY

The Public Service Commission of Wisconsin (PSCW) respectfully submits these Reply Comments to the Federal Communications Commission (FCC) with respect to the "Notice of Proposed Rulemaking" (NPRM) in the above-captioned docket.

For several reasons, the FCC cannot and should not conclude that sections 271 and 272 of Communications Act of 1934, as created by the Telecommunications Act of 1996, fully preempt state jurisdiction over intrastate services:

-- The legal analysis of the FCC with respect to preemption, as supported by other comments (AT&T Corp., for example), is consistent neither with Congressional direction in § 601(c) that implied preemption is prohibited, nor the simple meaning of the "restrictions and obligations" language of § 601(a).

-- Preemption at this time is premature with respect to §§ 271 and 272. The consultation/application process for the interLATA entry of RBOCs affords ample opportunity to evaluate preemption in specific circumstances.

-- On a practical, substantive basis, full preemption is not justified. Section 271 requirements need not preclude either a state's right under § 253(b) to implement a state's protecting consumers, service quality, universal service objectives, and the

public safety and welfare, or a state's opportunity under § 261(c) to advance competition in telecommunications. As for § 272, many of the duties specified in § 272(c) and (e) prohibit conduct that states still presently regulate in relation to intrastate services. The current state/federal "dual jurisdiction" scheme of § 2(b) of the Communications Act of 1934, in general, still permits states under parallel state statutes to enforce the prohibitions imposed by § 272.

-- Preemption actually could have adverse consequences to achievement of the objectives of the Telecommunications Act of 1996 (1996 Act). For example, Wisconsin enacted new legislation in 1994 that anticipated the pro-competition changes of the 1996 Act. But if the proposed preemption conclusions of this NPRM are adopted, Wisconsin may be precluded from enforcing its own statutes that promote competition (s. 196.03(6), Wis. Stats.), ban cross-subsidies (s. 196.204, Wis. Stats.), and establish consumer safeguards for new entrants as well as end-user customers (s. 196.219, Wis. Stats.). In addition, preemption also could offer to companies opportunities to play one jurisdiction against another that would hinder the ability of the states to contribute their enforcement resources to those non-discrimination and imputation objectives sought by both the FCC and the states.

Full preemption of state jurisdiction in relation to Sections 271 and 272 is not legally justified, premature in view of the state-by-state "checklist" proceedings to come, and is not warranted on a substantive basis. The FCC should not lose sight of very practical opportunities to partner with the states to accomplish the objectives of the 1996 Act.

Reply Comments of Public Service Commission
of Wisconsin
August 28, 1996

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REPLY COMMENTS OF THE PUBLIC SERVICE COMMISSION OF WISCONSIN

The Public Service Commission of Wisconsin (PSCW) respectfully submits these Reply Comments to the Federal Communications Commission (FCC) with respect to the above-identified rulemaking proceeding (NPRM).

I. THE PREEMPTION OF STATE JURISDICTION OVER INTRASTATE SERVICES SET FORTH IN THE NPRM AND SUPPORTED BY SOME COMMENTS RESTS ON A FAULTY READING OF § 601(a) OF THE TELECOMMUNICATIONS ACT OF 1996.[1] (¶ 21-26).

The NPRM cites § 601(a) as supporting the conclusion that Congress intended in its treatment of the AT&T Consent Decree to preempt state jurisdiction over the intrastate aspects of the subject matter of §§ 271 and 272. Section 601(a) provides:

---

[1] Telecommunications Act of 1996, Pub. L. 104-104, 110 Stats. 56 (1996) (to be codified at 47 U.S.C. § 151 et. seq.) (All citations will be to the 1996 Act as it will be codified in the United States Code.) The 1996 Act amended the Communications Act of 1934 (Communications Act or 1934 Act).

> "Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and obligations imposed by such Consent Decree."

The NPRM also observed that: 1) the absence of explicit recognition of intrastate services in the statutes seems to have supplanted the intrastate/interstate distinction with an intraLATA/interLATA distinction; 2) reading §§ 271 and 272 in the foregoing manner "fits well" with the statute as a whole; and 3) in view of its tentative conclusion (since affirmed) in the Interconnection NPRM,[2] that Congress intended §§ 251 and 252 to apply to both interstate and intrastate interconnection, a similar interpretation is warranted for §§ 271 and 272. Consequently, the NPRM tentatively concludes that FCC rules implementing §§ 271 and 272 apply to both intrastate and interstate services. NPRM ¶ 21-26.

This analysis does not articulate any limits on the preemption of state jurisdiction under §§ 271 and 272. But, for the reasons stated below, there must be significant limits on the intrusion into reserved state jurisdiction under § 2(b) of the Communications Act of 1934[3] because the scope of §§ 271 and 272 is very limited.

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[2] See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182 (released April 19, 1996), and the First Report and Order (released August 8, 1996), ¶ 86-93, in which the FCC sustained its tentative conclusion in the NPRM that the language of §§ 251 and 252 applied to both the interstate and intrastate aspects of interconnection.

[3] 47 U.S.C. § 151 et. seq.

A. The NPRM analysis implies preemption of state law in direct contravention of explicit Congressional direction in § 601(c) not to do so. (¶21-22)

First, the purpose of § 601(a) is to prescribe, on a going forward basis, the succession of 1996 Act to the governance of those activities previously subject to the AT&T Consent Decree under the District Court. It does not speak expressly to any allocation of jurisdiction between the FCC and the states. If anything, it addresses the return of federal telecommunications jurisdiction from the judicial branch to the auspices of the 1934 Act and the FCC. Yet, the NPRM implies, that because intrastate interLATA matters were covered by the Consent Decree, Congress intended to preempt any resumption of otherwise applicable state regulation that had been suspended by reason of the Consent Decree.

This implication of preemption of state jurisdiction is simply not permitted by § 601(c) of the 1996 Act: "This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments." The Conference Report, H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 198 (1996), makes no mention of a preemption effect and further states, at 201, that the very function of the provision is to bar assertions of "implied preemption."

B. The NPRM and comments supporting the NPRM misread § 601(a).

Besides using a preemption theory barred by § 601(c), the NPRM and it supporters of preemption misread the plain language of § 601(a). As of the date of the 1996 Act, the "restrictions and obligations" of the AT&T Consent Decree on the conduct of the Bell operating companies were replaced by the "restrictions and obligations" of the Communications Act, as amended, on the conduct of the Bell operating companies. Nothing in the 1996 Act requires the conclusion that the "restrictions and obligations" of the Communications Act must somehow, for the sake of consistency, be equivalent in scope and effect to the "restrictions and obligations" of the decree. All argument along this line is tantamount to forbidden implied preemption. If anything, the "restrictions" of the Communications Act include the role of the states set forth in § 2(b).

The NPRM asserts (¶ 25) that Congress could not have intended letting the states control intrastate interLATA entry when the concerns regarding control of bottleneck facilities are "equally important" to both intrastate and interstate jurisdiction. But just because there is equal concern in both jurisdictions does not logically lead to the conclusion that states are without all ability to deal with the bottleneck issues in their intrastate jurisdiction equal to that of the FCC in its interstate jurisdiction. In fact, Congress recognized in § 272(e)(2)(B) that some states, where orders had been issued prior to December 19, 1995, were ahead of the federal government in opening up competition. But Congress did not supersede those state efforts, which Congress would have done, if it had any evidence that the states

were not capable. The unstated assumption in the NPRM that the states are unable to effect orderly introduction of competition is not valid. Consequently, the conclusion that Congress must therefore have intended to preempt state intrastate jurisdiction, is without foundation.

II. PREEMPTION OF THE STATES IN THIS PROCEEDING WITH RESPECT TO § 271 IS PREMATURE, GIVEN THE AVAILABILITY OF THE UPCOMING CONSULTATION/APPLICATION PROCESSES TO DETERMINE SPECIFIC PREEMPTION NEEDS ON A STATE-BY-STATE BASIS. (¶ 21-26)

Section 271 of the 1996 Act defines an explicit "entry process" for a BOC operating company or affiliate for entry into the interLATA markets. Satisfaction of the federally-specified process should not require preemption of state intrastate jurisdiction because § 271(d)(2)(B) requires the FCC to consult with each state commission before it may proceed to authorize interLATA entry as "consistent with the public interest, convenience and necessity." Section 271(d)(3)(B).

State intrastate "public interests" should be given major consideration. In § 271 itself, Congress only imposed one direct limitation on state action, namely a bar to state action ordering early implementation of intraLATA dialing parity before three years after enactment of the 1996 Act or the BOC has satisfied the competitive checklist, whichever is earlier. § 271(e)(1)(B). Under a proper reading of the 1996 Act, that is, a reading avoiding implied preemption, the states plainly are critical to shaping specific policies under §§ 271 and 272.

Indeed, the consultation and application process of § 271(d), rather than this rulemaking, is the appropriate vehicle for determining whether any preemption is necessary at all. It is in the consultation and application process that all concerned may have their say as to whether any state intrastate objectives must give way as an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Freightliner Corp. v. Myrick, 514 U.S. ___, 131 L.Ed. 2d, 385, 392, 115 S. Ct. 1483, 1487 (1995). Because the entry is on a state-by-state basis, and the state commissions must be consulted, a rational construction of the statute requires that the state's expression of the public interest should be a major, if not dominant, factor in the assessment of the public interest. Asserted preemption of state jurisdiction over intrastate matters is inconsistent with the foregoing duty.

III. FULL PREEMPTION OF STATE INTRASTATE INTERLATA JURISDICTION UNDER § 272 WOULD IMPEDE STATE ACTION THAT IS POTENTIALLY PROTECTED UNDER §§ 253(b) AND 261(c) AND FITS EASILY WITHIN THE CURRENT JOINT STATE/FEDERAL FRAMEWORK. (¶ 21-26)

A. The Separate Subsidiary Entity.

Sections 272(a) and (b) require a truly structurally separate subsidiary for an RBOC to engage in the interLATA toll market. Sections 272(c) and (e)(1)-(4) prohibit certain anti-competitive, nondiscriminatory activities while the separate subsidiary is in place, § 272(c), and on a permanent basis once the separate subsidiary requirement expires, § 271(e).

Nothing in § 272 expressly precludes state action that would impose allowable state-law requirements with respect to the set-up and certification of the required separate subsidiary, provided the requirements do not pose any impossibility of simultaneous compliance with the 1996 Act. Freightliner, 131 L. Ed. 2d at 392. Section 272 specifies certain requirements for the legal entity, but does not preempt any state certification process. If Congress wanted to have exclusive federal jurisdiction of the separate subsidiary, it could well have excluded state certification processes. It did not do so.

Moreover, additional state requirements will likely be considered, and should have their full protection, as reserved state matters under §§ 253(b) and 261(c). A state commission may have significant concerns relating to the BOC arising out of state law that are protected under § 253(b), respecting universal service, public welfare, service quality and consumer safeguards, or § 261(c), respecting state advancement of competition beyond federal minimums. For example, a state might decide that, for intrastate interLATA purposes, BOC (or affiliate) entry into intrastate interLATA markets should be delayed subject to satisfaction of previously-made infrastructure investment commitments, needed quality of service improvements, universal service obligations, or some other factor for which delayed or conditioned entry into intrastate interLATA markets is appropriate leverage exercised in the public interest.

B. Non-Discrimination and Imputation Duties.

The non-discrimination duties specified in § 272(c) and (e)(1)-(4) for the BOC operating companies are not unique. The new duties in the 1996 Act are already effectively embraced by the states' traditional utility laws barring utility discriminatory actions and practices, e.g., s. 196.37(2), Wis. Stats. Wisconsin has, in enacting 1993 Wis. Act 496, already adopted statutes regarding competition, cross-subsidy, and new consumer protections for a much less regulated intrastate telecommunications industry, e.g., 196.03(6), 196.204, 196.219 and 196.52(7), Wis. Stats. (Copies of the statutes are attached as Appendix A.)

Sections 272(c) and (e) do not create new duties that only federal jurisdiction can deal with. Sections 272(c) and (e) establishes new federal law duties that largely parallel existing duties under state law for intrastate purposes. Thus, the non-discrimination and imputation duties are owed to both jurisdictions. Just because the duties are commonly owed to both does not mean that each jurisdiction cannot enforce the duties with respect to the services under their respective jurisdictions. Put another way, each jurisdiction can police the duties of §272 and corresponding state laws according to the services within their respective jurisdictions. State jurisdiction to monitor prohibited intrastate conduct does not impede simultaneous compliance with the specified duties in § 272 any more than state regulation of intrastate interLATA toll services interferes with FCC jurisdiction over interstate toll services. The current framework of dual state/federal regulation of telecommunications that differentiates between interstate and intrastate services can

readily accommodate both state and federal oversight of the prohibited conducts identified in § 272.

In sum, preemption of state intrastate interLATA services under §§ 271 and 272 is not legally justified, and, in practical effect, is largely premature and unwarranted. Any across-the-board preemption of state jurisdiction that may be warranted must be, at this time, limited to the express requirements of the sections, based upon a finding impossibility of simultaneous compliance or actual obstruction of Congressional objectives.

IV. FULL PREEMPTION AT THIS TIME COULD FRUSTRATE THE ULTIMATE OBJECTIVES OF THE 1996 ACT AND DENY THE ASSISTANCE OF THE STATES IN ENFORCING §§ 271 AND 272. (¶ 94-97)

The potential for dual jurisdiction oversight, as noted in the previous section, suggests that foregoing preemption will make the states effective partners in the pursuit of the development of competition in the interLATA markets. States should have a reasonable opportunity -- the new law has been in place just over six months -- to change their laws in light of the 1996 Act.

Preemption at this time could actually do have the effect of unnecessarily impairing pro-competitive legislation adopted by the states prior to the 1996 Act. Wisconsin enacted 1993 Wis. Act 496 in July, 1994, to foster a more pro-competitive telecommunications industry. Section 196.219, Wis. Stats., defines "consumers" with respect to incumbent local exchange carriers as including not only end-users but also

other telecommunications providers that buy the incumbents' services. Preemption of state jurisdiction with respect to the fundamental duties of non-discriminatory information and service provisioning under § 271(e) would put in limbo Wisconsin's equivalent state provisions in s. 196.219(3)(b), (em), and (h) (See Appendix A, P. 17). Indeed, portions of s. 196.219(3), Wis. Stats., have anticipated FCC regulations as a standard, but nevertheless may be rendered inapplicable because of federal preemption, e.g., s. 196.219(3)(h), Wis. Stats. (no preferences for utility affiliates). Wisconsin already has an imputation test in place, ss. 196.015 and 196.204, Wis. Stats., with respect to the pricing of services that a BOC operating company sells to other providers, but also uses in its own competing services. Thus, a broad preemption decision would, in the case of some states and Wisconsin in particular, actually reduce protections intended in a more deregulated environment to allow competitors to be able to police abuses of the very type addressed by § 272.

Preemption will greatly blur the boundary between state and federal jurisdiction and give the BOC operating companies the opportunity to claim federal jurisdiction precludes state action over traditionally intrastate activities paralleling or within the scope of Sections 271 and 272. This risk is real, as the PSCW had to engage in lengthy negotiations with Ameritech regarding jurisdictional limits before it could commence a "parallel audit" -- not a joint audit -- with the FCC and the Ohio commission. Section 272 duties paralleling state law would be especially difficult to check if the BOC operating company could claim that federal preemption had ousted

the state from investigating conduct it considered to be affecting intrastate services. (See preceding section.)

Not preempting would actually allow the states to effectively enlarge the enforcement resources available, precisely because duties under §§ 271 and 272 would remain "commonly-owed" to both state and federal authorities. Through a blanket preemption of state intrastate jurisdiction, the FCC could actually impede the accomplishment of pro-competitive objectives shared by the FCC and the states alike.

In conclusion, the PSCW urges the FCC to refrain from preemption of state jurisdiction. If and when necessary, investigation of preemption should be on a case-by-case approach which can more specifically identify those state actions that actually thwart federal policies. The states should have a reasonable opportunity to conform or adjust their laws to the 1996 Act before the FCC resorts to preemption. Allowing the developing Federal-State partnership in telecommunications to continue may make most, if not all, preemption considerations in this rulemaking unnecessary.

Respectfully submitted,

Cheryl L. Parrino
Chairman

August 28, 1996

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APPENDIX A

WISCONSIN STATUTORY REFERENCES

Section 196.204 Cross-subsidization limited. (referenced in sections 196.219 and 196.52)

196.204 Cross-subsidization limited. **(1)** Except for retained earnings, a telecommunications utility may not subsidize, directly or indirectly, any activity, including any activity of an affiliate, which is not subject to this chapter or is subject to this chapter under s. 196.194, 196.195, 196.202 or 196.203. [nonrelevant material] No telecommunications utility may allocate any costs or expenses in a manner which would subsidize any activity which is not subject to this chapter or is subject to this chapter under s. 196.194, 196.195, 196.202 or 196.203. [nonrelevant material] Except as provided in subs. (2) and (4) the commission may not allocate any revenue or expense so that a portion of a telecommunications utility's business which is fully regulated under this chapter is subsidized by any activity which is not regulated under this chapter or is partially deregulated under s. 196.194, 196.195, 196.202 or 196.203. [nonrelevant material]
(2) The commission may attribute revenues derived from the sale of directory advertising or directory publishing rights to the regulated activities of a telecommunications utility for rate making and other utility purposes.

...

(4) In order to protect the public interest, the commission may allocate the earnings derived from sale of services partially deregulated under s. 196.195, 196.202 or 196.203 [nonrelevant material] to the fully regulated activities of a telecommunications utility for rate-making purposes.
(5) (a) In addition to the other requirements of this section, each telecommunications service, relevant group of services and basic network function offered or used by a telecommunications utility shall be priced to exceed its total service long-run incremental cost. The commission may waive the applicability of this paragraph to a telecommunications utility's basic local exchange service if the commission determines that a waiver is consistent with the factors under s. 196.03 (6).

...

(6) (a) In addition to the other requirements of this section, a telecommunications utility shall meet the imputation test in this subsection if all of the following apply:

1. The telecommunications utility has a service offering that competes with an offering of another telecommunications provider.

2. The other telecommunications provider's offering utilizes a service, including any unbundled service element or basic network function, from the telecommunications utility that is not available within the relevant market or geographic area on reasonably comparable terms and conditions from any other telecommunications provider.

3. The telecommunications utility's own offering uses that same noncompetitive service, or its functional equivalent.

(b) The price of a telecommunications service subject to an imputation test shall exceed the sum of all of the following:

1. The tariffed rates, including access, carrier common line, residual interconnection and similar charges, for the noncompetitive service or its functional equivalent that is actually used by the telecommunications utility in its service offering, as those rates would be charged any customer for the use of that service.

2. The total service long-run incremental costs of all other components of the telecommunications utility's service offering, including access charges actually paid.

...

(Emphasis added.)

Section 196.015 Total service long-run incremental cost. (Section 196.015 contains the definition of total service long-run incremental cost, which is referenced in section 196.204(5)(a))

196.015 Total service long-run incremental cost. (1) In this section, "basic network function" means the smallest disaggregation of local exchange transport, switching and loop functions that is capable of being separately listed in a tariff and offered for sale.

(2) In this chapter, total service long-run incremental cost is calculated as the total forward-looking cost, using least cost technology that is reasonably implementable based on currently available technology, of a telecommunications service, relevant group of services, or basic network function that would be avoided if the telecommunications provider had never offered the service, group of services, or basic network function or, alternatively, the total cost that the telecommunications provider would incur if it were to initially offer the service, group of services, or basic network function for the entire current demand, given that the telecommunications provider already produces all of its other services.

Section 196.03 Utility charges and service; reasonable and adequate. (Section 196.03(6) is referenced in sections 196.204(5)(a) and 196.219)

...

(6) In determining a reasonably adequate telecommunications service or a reasonable and just charge for that telecommunications service, the commission shall consider at least the following factors in determining what is reasonable and just, reasonably adequate, convenient and necessary or in the public interest:
(a) Promotion and preservation of competition consistent with ch. 133 [nonrelevant material] and s. 196.219.
(b) Promotion of consumer choice.
(c) Impact on the quality of life for the public, including privacy considerations.
(d) Promotion of universal service.
(e) Promotion of economic development, including telecommunications infrastructure deployment.
(f) Promotion of efficiency and productivity.
(g) Promotion of telecommunications services in geographical areas with diverse income or racial populations.

Section 196.37 Lawful Rates; reasonable service.

...

(2) If the commission finds that any measurement, regulation, practice, act or service is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful, or that any service is inadequate, or that any service which reasonably can be demanded cannot be obtained, the commission shall determine and make any just and reasonable rder relating to a measurement, regulation, practice, act or service to be furnished, imposed, observed and followed in the future.

Section 196.52 Relations with affiliated interests; definition; contracts with affiliates filed and subject to commission control.

...

(3) (a) In this subsection, "contract or arrangement" means a contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial or similar services and any contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than management, supervisory, construction, engineering, accounting, legal, financial or similar

services. Except as provided under par. (b), unless and until the commission gives its written approval, any contract or arrangement is not valid or effective if the contract or arrangement is made between a public utility and an affiliated interest after June 7, 1931. Every public utility shall file with the commission a verified copy of any contract or arrangement, a verified summary of any unwritten contract or arrangement, and any contract or arrangement, written or unwritten, which was in effect on June 7, 1931. The commission shall approve a contract or arrangement made or entered into after June 7, 1931, only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. The commission may not approve any contract or arrangement unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service to each public utility or of the cost to the public utility of rendering the services or of furnishing the property or service to each affiliated interest. No proof is satisfactory under this paragraph unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract of the records and accounts or a summary taken from the records and accounts if the commission deems the abstract or summary adequate. The accounts shall be properly identified and duly authenticated. The commission, where reasonable, may approve or disapprove a contract or arrangement without submission of the cost records or accounts.

(b) 1. The requirement for written approval under par. (a) shall not apply to any contract or arrangement if the amount of consideration involved is not in excess of $25,000 or 5% of the equity of the public utility, whichever is smaller, and does not apply to a telecommunications utility contract or arrangement. Regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount may not be broken down into a series of transactions to come within the exemption under this paragraph. Any transaction exempted under this paragraph shall be valid or effective without commission approval under this section.

2. In any proceeding involving the rates or practices of the public utility, the commission may exclude from the accounts of the public utility any payment or compensation made pursuant to a transaction exempted under this paragraph unless the public utility establishes the reasonableness of the payment or compensation.

(c) If the value of a contract or arrangement between an affiliated interest and a public utility, other than a telecommunications utility, exceeds $1,000,000, the commission:

1. May not waive the requirement of the submission of cost records or accounts under par. (a);

2. Shall review the accounts of the affiliated interest as they relate to the contract or arrangement prior to the commission approving or disapproving the contract or arrangement under par. (a); and

3. May determine the extent of cost records and accounts which it deems adequate to meet the requirements for submission and review under subds. 1 and 2.

...

5. (b) For telecommunications utilities, the commission shall have supervisory jurisdiction over the terms and conditions of contracts and arrangements under this section as necessary to enforce ss. 196.204 and 196.219.

(Emphasis added.)

Section 196.219 Protection of telecommunications consumers. (referenced in section 196.52)

196.219 Protection of telecommunications consumers.
(1) DEFINITION. In this section, "consumer" means any person, including a telecommunications provider, that uses the services, products or facilities provided by a telecommunications utility.
(2) CONSUMER PROTECTION. (a) Notwithstanding any exemptions identified in this chapter except s. 196.202, [nonrelevant material] a telecommunications utility shall provide protection to its consumers under this section unless exempted in whole or in part by rule or order of the commission under this section. The commission shall promulgate rules that identify the conditions under which provisions of this section may be suspended.
(b) On petition, the commission may grant an exemption from a requirement under this section upon a showing that the exemption is reasonable and not in conflict with the factors under s. 196.03 (6).
(c) On petition, the commission may grant an exemption from a requirement under this section retroactively if the application of the requirement would be unjust and unreasonable considering the factors under s. 196.03 (6) or other relevant factors.
(d) If the commission grants an exemption under this subsection, it may require the telecommunications utility to comply with any condition necessary to protect the public interest.
(2m) ACCESS SERVICES. (a) A telecommunications utility shall provide access services under tariff under the same rates, terms and conditions to all telecommunications providers.
(b) Paragraph (a) does not apply to cellular telephone interconnection arrangements authorized or required by the federal communications commission.
(3) PROHIBITED PRACTICES. A telecommunications utility may not do any of the following with respect to regulated services:
(a) Refuse to interconnect within a reasonable time with another person to the same extent that the federal communications commission requires the telecommunications utility to interconnect. The public service commission may require additional interconnection based on a determination, following notice and opportunity for

hearing, that additional interconnection is in the public interest and is consistent with the factors under s. 196.03 (6).

(b) Upon request, fail to disclose in a timely and uniform manner information necessary for the design of equipment and services that will meet the specifications for interconnection.

(c) Impair the speed, quality or efficiency of services, products or facilities offered to a consumer under a tariff, contract or price list.

(d) Unreasonably refuse, restrict or delay access by any person to a telecommunications emergency service.

(e) Fail to provide a service, product or facility to a consumer other than a telecommunications provider in accord with the telecommunications utility's applicable tariffs, price lists or contracts and with the commission's rules and orders.

(em) Refuse to provide a service, product or facility to a telecommunications provider in accord with the telecommunications utility's applicable tariffs, price lists or contracts and with the commission's rules and orders.

(f) Refuse to provide basic local exchange service, business access line and usage service within a local calling area and access service on an unbundled basis to the same extent that the federal communications commission requires the telecommunications utility to unbundle the same services provided under its jurisdiction. The public service commission may require additional unbundling of intrastate telecommunications services based on a determination, following notice and opportunity for hearing, that additional unbundling is required in the public interest and is consistent with the factors under s. 196.03 (6). The public service commission may order unbundling by a small telecommunications utility.

(g) Provide services, products or facilities in violation of s. 196.204.

(h) To the extent prohibited by the federal communications commission, or by the public service commission under rules promulgated consistent with the factors under s. 196.03 (6), give preference or discriminate in the provision of services, products or facilities to an affiliate, or to the telecommunications utility's own or an affiliate's retail department that sells to consumers.

(j) Restrict resale or sharing of services, products or facilities, except for basic local exchange service other than extended community calling, unless the commission orders the restriction to be lifted. A telecommunications utility that has 150,000 or less access lines in use in this state may limit the use of extended community calling or business line and usage service within a local calling area as a substitute for access service, unless the commission orders the limitation to be lifted.

(L) Fail to provide, or to terminate, any telecommunications service as necessary to comply with the minimum standards of service established by the commission with respect to technical service quality, deposits, disconnection, billing and collection of amounts owed for services provided or to be provided.

(m) Provide telecommunications service to any person acting as a telecommunications utility, telecommunications provider, alternative

telecommunications utility or telecommunications carrier if the commission has ordered the telecommunications utility to discontinue service to that person.

(n) Provide telecommunications service in violation of s. 100.207. [nonrelevant material]

(4) ENFORCEMENT. (a) On the commission's own motion or upon complaint filed by the consumer, the commission shall have jurisdiction to take administrative action or to commence civil actions against telecommunications utilities to enforce this section.

(b) The commission may, at its discretion, institute in any court of competent jurisdiction a proceeding against a telecommunications utility for injunctive relief to compel compliance with this section, to compel the accounting and refund of any moneys collected in violation of this section or for any other relief permitted under this chapter.

(4d) UNFAIR TRADE PRACTICE ENFORCEMENT. Upon receipt of a notice issued under s. 100.208, [nonrelevant material] the commission may order a telecommunications provider to cease offering the telecommunications service that creates the unfair trade practice or method of competition.

(4m) CIVIL ACTIONS. Upon a finding of a violation of this section by the commission, any person injured because of a violation of this section by a telecommunications utility may commence a civil action to recover damages or to obtain injunctive relief.

(5) ALTERNATE DISPUTE RESOLUTION. The commission shall establish by rule a procedure for alternative dispute resolution to be available for complaints filed against a telecommunications utility.

(Emphasis added.)